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No. 99-1001

Supreme Court, U.S.
FILED
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In The

Supreme Court of the United States

KATINA ESTELLE DART

Petitioner,

v.

ROBERT CHARLES DART

Respondent.

PETITIONER'S REPLY BRIEF To The Brief In Opposition To The Petition For A Writ Of Certiorari To The Michigan Supreme Court

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ARGUMENT

I

THE CHILDREN WERE USED AS LEVERAGE AND HELD HOSTAGE BY THE FOREIGN COURT.

Respondent attempts to mislead this Court by making a hyper technical distinction without a difference that the parties' children were seized and held as wards of the English Court through two proceedings instead of one. According to Respondent's twisted logic, because there were technically two proceedings (a divorce proceeding and a wardship proceeding), Petitioner was not compelled to remain in the jurisdiction of the English Court and could have returned to America to litigate the divorce.[1] As Respondent knew full well, Petitioner ***never*** would have abandoned her children in

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[1] Contrary to Respondent's false statements, the children were only allowed to leave England under the strict control of the Court. On the trip to Switzerland (which was planned prior to Respondent filing for divorce), the Court mandated that Petitioner's English solicitor accompany them on the trip and retain possession of the children's passports which had to be again surrendered to the English Court on their return. In contrast, Respondent made the children citizens of Belize in spite of Petitioner's objection. Further, Respondent's claim that Petitioner could have violated the English Court's wardship and absconded with the children to the United States (thereby subjecting herself to a charge of international kidnaping) is nothing short of outrageous because the unsound and irresponsible rule evoked by such reasoning is that American citizens must then directly violate an order of a foreign tribunal in order to obtain protection from American courts.

England or any other foreign country, and they were seized only five days after Respondent filed for divorce. If she had, she would have lost all rights to her children and Respondent would have been awarded full custody. Importantly, an American citizen should never be compelled to abandon one's children in a foreign country to obtain Due Process, and this Court should refuse to recognize any foreign judgment which was obtained by the party advancing such judgment by using American children as leverage, especially where, as here, the children tearfully pleaded three times with English court officials to be allowed to return to America with Petitioner and their return was denied by the very same judge who issued the English Judgment.[2] Petitioner implores this Court to accept this case for review because it could have critical impact upon the welfare, safety and well-being of American women and children who may be stranded in foreign countries against their will.

II

RESPONDENT'S PERSONAL ATTACKS UPON PETITIONER ARE NOT RELEVANT.

Respondent makes numerous personal attacks upon Petitioner to portray Petitioner as someone undeserving of this Court's attention. Regardless of those attacks and his

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[2] When the English Judge was advised that the children were distressed at their detention by the Court, he coldly responded that they would "get over it."

feigned innocence for the breakdown of the marriage, Petitioner is the devoted mother of the parties' two children and was, for many years, his wife who, at Respondent's request, agreed to temporarily reside with the children in England so Respondent could work in England at the family business and obtain the distribution from the Dart family trust and also renounce his United States citizenship. Of course, no court has been able to address Respondent's fault in causing the breakdown of the marriage. For example, Respondent had the children and himself made citizens of Belize without Petitioner's knowledge or consent, he renounced his United States citizenship to avoid paying taxes, engaged in extreme behavior resulting from his unbounded paranoia that he was in personal danger (such as demanding that the parties' London home be equipped with a bulletproof trap door for his protection), and other perverse, disturbing activities and calculated behavior. This Court should not countenance Respondent's repulsive disregard of his own conduct and his attempt to portray Petitioner in a false light, especially when the parties' conduct has no relevance whatsoever to the issues before this Court and, if a record were made, Respondent would be shown for the dishonorable character that he is.

III

ENGLISH LAW IS NOT AMERICAN LAW.

Respondents' arguments are permeated with the

concept that because the foreign judgment was rendered in England (apparently as opposed to some unnamed distasteful or repugnant country), this Court should not scrutinize either its origin or its result because, according to Respondent, "the English "system of laws" **IS** our "system of laws." (Respondent's Brief in Opposition, p. 14, emphasis in original).[3] After all, Respondent argues, it was *England*, how repugnant could the English Judgment be?[4] According to

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For example, Respondent argues that, because the *Hilton* Court in *Hilton* v. *Guyot*, 159 U.S. 113; 16 S.Ct. 139; 40 L.Ed. 95 (1895), in *dicta*, noted English concepts of comity when formulating its comity test, that American jurisprudence is therefore necessarily the equivalent of English jurisprudence and, as a result, Petitioner's claim of bias in the English system must be without merit. While there are many errors in logic and reasoning with Respondent's conclusions, this Court should principally note that *Hilton* expounded on the doctrine of comity, *not* the equivalency of English divorce law with American divorce law. Certainly, no one would cite English precedent as either binding or persuasive to an American court for use in a ruling of that court. Further, the *Hilton* Court likely turned to English comity precedents because of a lack of such precedents in America given that *Hilton* was decided in 1895, not because the Court was making any pronouncement that the two countries' systems of laws were identical or even similar.

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Numerous news articles have commented, both in England and the United States, that England is well known as the forum of choice for wealthy men to divorce. For example, articles titled "What Should a Rich Woman Get?" and "Why Husbands Prefer London"

Judge William Collette, the ***only*** judge in this country to make any *factual* finding regarding the public policy underlying the English Judgment, after a hearing on the issue, held that:

> Such a system is repugnant to our American traditions and to the divorce laws of Michigan. In Michigan, both of these parties will be given an equal opportunity to share in the jointly accumulated assets of their marriage.

Particularly, Judge Collette, after reviewing the English transcripts and the law, stated that he was "shocked." (Transcript of April 8, 1996 Hearing in the Ingham County Circuit Court, p. 24) at the limited scope of inquiry and the limited character of a wife's rights. Further, Petitioner never argued that the "American way" is the only way. Respondent blatantly misconstrues Petitioner's argument to be that because Michigan law would have rendered a different outcome, therefore the English system must be flawed. In support, Respondent cites *Loucks* v. *Standard Oil Co*, 224 N.Y. 99; 120 N.E. 198, 201 (N.Y. 1918) for the proposition that: "[w]e are not so provincial to say that every solution to a problem is wrong because we deal with it otherwise at home." Petitioner never argued to the contrary, but instead argued that a solution is "wrong" when it results from a

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appeared in The Sunday Telegraph (an English publication) in as early as 1996.

tainted and constitutionally-violative system of laws.

According to Respondent, this Court should simply "rubber stamp" judgments rendered in England, and any of its provinces or territories, even when they violate our constitutional freedoms, because American jurisprudence has its roots in England and our cultures, at times, are somewhat similar. Undoubtedly, the two cultures and systems of laws share similarities. But it is not the similarities that should deny the English Judgment recognition, but the differences. One of the most fundamental reasons why America broke free of English rule was that the colonists believed in equal protection and due process which were absent from English rule. While it did take two hundred years for women to achieve certain equalities under American law, our system of laws is strictly gender neutral. In contrast, English jurisprudence has not yet embraced gender equality, and the Trilogy[5] of precedents which effectively bars women from obtaining an equitable property division in divorce remain.[6]

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The "Trilogy" is *Duxbury* v. *Duxbury*, 1987 FLR 7; *Preston* v. *Preston*, 1981 2FLR 331; and *Thyssen-Bornemisza* v. *Thyssen-Bornemisza*, 1985 1 FLR 1069.

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As detailed in Petitioner's Petition for Writ of Certiorari, the highest court in England to review the English Judgment had serious reservations about the propriety and fairness of the Trilogy and its impact in this type of case. How can this Court accept both

No one can credibly argue that our systems of laws are the same, especially when our entire jurisprudence is guided by the United States Constitution, which is obviously and completely absent from the English legal landscape and which, along with the requirements of Due Process, must remain first and foremost and thereby deny recognition to the English Judgment.

IV
PETITIONER WAS DENIED DUE PROCESS.

One simple question that this Court should ask is: If the trust and other assets are truly Respondent's separate property outside the marital estate, why is Respondent so loath to have a determination made by a Michigan court? The simple answer is that in Michigan, or anywhere else in the United States, Respondent would not have the benefit of the Trilogy of biased English precedents to conceal and protect the assets from Petitioner. One would think that if the trust assets were actually separate property Respondent would welcome a decision by the Michigan court declaring his right to such assets inviolate. That is, unless the trust assets – and any other assets which were not disclosed to Petitioner – should be divided between the parties because of Petitioner's

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a system of laws and a result which were questioned even by the issuing foreign tribunal's court of review? This Court's review of this case could help facilitate the changes pondered by the English Court of Appeal.

contribution to such assets. If Respondent had allowed the Michigan divorce to proceed, the matter would have been concluded and the parties both would have saved substantial sums in litigating this appeal. Importantly, Respondent does not disagree with Petitioner's statement of the effect of the Trilogy in cases like this, but rather he contends that the Trilogy was not applied.[7]

Based upon the record that exists, no court could reach the conclusion that the trust assets, and any other assets which were not disclosed at all in the English Proceeding, were Respondent's separate property. At best, Respondent argues that Petitioner could *proffer* any evidence she wanted in the English Proceeding. Even assuming, *arguendo*, that Petitioner had the ability to present evidence of her choosing and obtained the necessary information, the evidence fell on deaf ears, or at least upon the ears of a judge who was constrained by controlling English precedent that such evidence regarding assets in excess of Petitioners' "reasonable requirements" was irrelevant.[8] Moreover, the dissenters to the

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[7] The Michigan Supreme Court stated in the majority opinion, regarding the Trilogy, that: "[h]ad the English Court actually used this formulation to divide the parties' marital assets, we might agree with [Petitioner] that she was denied due process." (A-13).

[8] In fact, Petitioner faces severe sanctions, to the sum over $1,000,000.00, for seeking discovery which the English judge

Michigan Supreme Court majority opinion did not agree that Petitioner was not harmed or denied Due Process by the "looming shadow" of the *Duxbury/Preston/Thyssen-Bornemisza* English precedents, and stated that the application of such precedents would raise "serious due process concerns." (A-18). This Court should review this matter, especially when two Michigan Supreme Court justices dissented and all of the justices held that the application of the English precedents at issue would result in a serious violation of Petitioner's Due Process rights.[9]

V

THIS COURT SHOULD DECLINE TO ADDRESS THE UNIFORM FOREIGN MONEY JUDGMENT RECOGNITION ACT.

The Michigan Supreme Court, from which the Petition was made, expressly declined to address any arguments

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considered irrelevant in light of *Preston/Duxbury/Thyssen-Bornemisza*. This sanction objectively demonstrates that any evidence presented by Petitioner was not considered by the English Court in its decision.

[9] It is worth noting that Respondent makes numerous conclusory statements regarding the application and meaning of English law even though Respondent's counsel of record are neither barristers or solicitors of the English bench nor qualified to render opinions regarding English law. An evidentiary hearing should be held on remand so that findings can be made regarding the application of English law and its impact upon this case.

relating to the Uniform Foreign Money Judgment Recognition Act, M.C.L. §691.1151, M.S.A. §27.955(1) ("UFMJRA"), Petitioner did not include the UFMJRA as an issue in the Petition, and this Court should similarly decline to address the issue when deciding whether to grant the Petition. In any event, the UFMJRA specifically states that a foreign judgment is not entitled to recognition unless the requirements of due process are met. M.C.L. § 691.1154(1). As stated in the Petition, Due Process was violated, so the UFMJRA would not allow enforcement of the English Judgment.

CONCLUSION

This Court should grant this Petition, and review this matter fully so that Due Process will not be diminished by any application of the lower court decisions as precedent, and the violation of Petitioner's Due Process rights can be addressed.

Respectfully Submitted,

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